

1 THE HONORABLE RICARDO S. MARTINEZ

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DAIMLER AG, a German corporation,

10 Plaintiff,

11 v.

12 AMAZON.COM, INC., a Delaware corporation,

13 Defendant.

No.: 2:16-cv-00518-RSM

**PLAINTIFF DAIMLER AG'S
MOTION TO LIFT STAY UNDER 28
U.S.C. § 1659**

NOTE ON MOTION CALENDAR:
September 8, 2017

14
15 **I. INTRODUCTION**

16 Daimler AG (“Daimler”) respectfully submits this motion requesting that the stay of
17 the instant case that was implemented by this Court’s Order dated June 20, 2016 (ECF No. 18)
18 be lifted pursuant to 28 U.S.C. § 1659(a).

19 **II. BACKGROUND**

20 On June 20, 2016, this Court granted a Stipulated Motion to Stay Action pursuant to
21 28 U.S.C. § 1659(a) pending the final determination by the International Trade Commission
22 (the “Commission”) of Investigation No. 337-1006 (the “Investigation”), filed by Defendant
23 Amazon.com, Inc. (“Amazon”). Pursuant to the order granting the stipulated motion,
24 this matter was stayed “pending the resolution of the investigation before the Commission.”
25 (ECF No. 18).
26

1 On December 2, 2016, the Administrative Law Judge (“ALJ”) issued an Initial
2 Determination that terminated the Investigation as to Amazon. *See* Declaration of Shauna M.
3 Wertheim, dated August 11, 2017 (“Wertheim Decl.”) at Ex. A. The Commission determined
4 not to review the Initial Determination and terminated the Investigation as to Amazon,
5 rendering the Initial Determination the final determination on December 16, 2016.
6 *See* Wertheim Decl. at Ex. B. On January 23, 2017, the ALJ issued another Initial
7 Determination which terminated the Investigation in its entirety based on the withdrawal of the
8 Complaint as to the last remaining respondents. *See* Wertheim Decl. at Ex. C.
9 The Commission determined not to review that Initial Determination and terminated the
10 Investigation, rendering that Initial Determination the final determination on February 9, 2017.
11 *See* Wertheim Decl. at Ex. D.

12 Since the final determination the parties have engaged in settlement discussions which
13 have not resolved the matter.

14 **III. LEGAL STANDARD**

15 28 U.S.C. § 1659(a) provides that “at the request of ... a respondent in the proceeding
16 before the Commission, the district court shall stay, until the determination of the Commission
17 becomes final, proceedings in the civil action with respect to any claim that involves the same
18 issues involved in the proceeding before the Commission.” 28 U.S.C. § 1659(a).
19 “§ 1659 requires that the stay of the district court proceedings continue until the Commission
20 proceedings are no longer subject to judicial review.” *In re Princo Corp.*, 478 F.3d 1345, 1355
21 (Fed. Cir. 2007). The appeal period for Commission determinations expires “60 days after the
22 determination becomes final.” 19 U.S.C. § 1337(c).

23 **IV. ARGUMENT**

24 As the Investigation is terminated at the Commission and there was no appeal within
25 the appeal period, the stay of the instant case should be lifted pursuant to 28 U.S.C. § 1659(a).
26 While Daimler obtained relief from various respondents at the Commission – including one

1 who provided certain wheels to Amazon – there still remain other wheels and relief not
2 included in the resolution reached at the Commission which necessitate resuming the instant
3 case against Amazon. Given the fact that the Commission’s resolution of the Investigation has
4 become final and the existence of outstanding legal and factual issues, it is appropriate now to
5 reopen this matter.

6 **V. CONCLUSION**

7 For the foregoing reasons, Daimler requests that the Court’s stay of the instant case be
8 lifted and the case be resumed.

9 **DATED** this 11th day of August, 2017.

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